

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

KEVIN FERNANDEZ,

Plaintiff,

v.

BERT JACKSON,

Defendants.

3:13-cv-00670-RCJ-WGC

**ORDER**

**I. DISCUSSION**

On August 4, 2016, the Ninth Circuit Court of Appeals affirmed in part, reversed in part, and vacated in part a prior order of this Court and remanded the case for further proceedings. (ECF No. 16 at 4). On September 16, 2016, this Court issued an order granting Plaintiff leave to amend his complaint in light of the Ninth Circuit's order. (ECF No. 20 at 1). The order, in part, stated the following:

If Plaintiff chooses not to file an amended complaint curing the stated deficiencies, Plaintiff must notify the Court within 30 days from the date of this order that he chooses to proceed on Count I against Defendants Jackson and Marikami, Count II against Defendants Serrano and Jackson, and Counts III, IV, V, VI, and VII through supplemental jurisdiction. If Plaintiff does not either file an amended complaint or file a notice informing the Court of his intent to proceed with this case without filing an amended complaint, the Court shall dismiss this case with prejudice.

(*Id.* at 2).

On October 11, 2016, Plaintiff filed a motion for reconsideration of this Court's September 16, 2016 order, a notice of intent to prosecute and file an amended complaint, and a motion for an extension of time to file his amended complaint. (ECF No. 22, 23, 24). In the motion for reconsideration, Plaintiff argues that the Court should permit his surviving claims to proceed against more defendants in light of the Ninth Circuit's order. (ECF No. 22 at 1).

1 In his notice, Plaintiff states that he will be filing an amended complaint in this case. (ECF No.  
2 23 at 1). In his motion for extension of time, Plaintiff seeks additional time to file his amended  
3 complaint to compensate for the lost time it took for him to receive the Court's September 16,  
4 2016 order. (ECF No. 24 at 1-2). Plaintiff seeks until October 28, 2016 to file his amended  
5 complaint. (*Id.* at 2).

6 The Court grants Plaintiff's motion for an extension of time to file his amended  
7 complaint. Plaintiff shall file his amended complaint on or before Friday, October 28, 2016.  
8 The Court denies as moot Plaintiff's motion for reconsideration because Plaintiff has stated  
9 that he will be filing an amended complaint. The Court must screen Plaintiff's amended  
10 complaint and, thus, it is irrelevant whether Plaintiff may or may not have stated a claim  
11 against more defendants in his original complaint. The Court reminds Plaintiff that an  
12 amended complaint supersedes (replaces) the original complaint and, thus, the amended  
13 complaint must be complete in itself. *See Hal Roach Studios, Inc. v. Richard Feiner & Co.,*  
14 *Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (holding that "[t]he fact that a party was named in the  
15 original complaint is irrelevant; an amended pleading supersedes the original"); *see also Lacey*  
16 *v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (holding that for claims dismissed with  
17 prejudice, a plaintiff is not required to reallege such claims in a subsequent amended  
18 complaint to preserve them for appeal). Plaintiff's amended complaint must contain all claims,  
19 defendants, and factual allegations that Plaintiff wishes to pursue in this lawsuit.

## 20 **II. CONCLUSION**

21 For the foregoing reasons, IT IS ORDERED that the motion for reconsideration  
22 (ECF No. 22) is denied as moot.

23 IT IS FURTHER ORDERED that the motion for an extension of time (ECF No. 24) is  
24 granted. Plaintiff shall file his amended complaint on or before Friday, October 28, 2016.

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1 IT IS FURTHER ORDERED that if Plaintiff fails to file an amended complaint by the  
2 stated deadline, this case shall proceed on the original complaint's Count I against Defendants  
3 Jackson and Marikami, Count II against Defendants Serrano and Jackson, and Counts III, IV,  
4 V, VI, and VII through supplemental jurisdiction.

5 DATED: October 12, 2016.

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8 UNITED STATES MAGISTRATE JUDGE